Remarks

I. Introduction

This is in response to the Office Action dated July 1, 2003. The Office Action rejected claims 1 and 9 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,442,139 (Hosein). Claims 2-8 and 10-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hosein in view of U.S. Patent No. 6,438,652 (Jordan et al.).

In response, Applicant has amended claims 1 and 9. Claims 3 and 11 are cancelled by this amendment. Claims 1, 2, 4-10 and 12-16 remain for consideration.

Applicant has amended the specification to correct several minor typographical errors.

II. U.S. Patent No. 6,442,139 to Hosein is Unavailable as a Reference for use in an Obviousness rejection.

Independent claims 1 and 9 have been amended to incorporate the limitations of dependent claims 3 and 11 respectively. Independent claims 3 and 11 were both rejected under 35 U.S.C. §103(a) as being unpatentable over Hosein in view of Jordan et al. However, Hosein is not available as a reference under §103(a). Under 35 U.S.C. §103(c) a patent to another which qualifies as prior art only under subsection §102(e) shall not preclude patentability under §103 where the patent and the claimed invention were, at the time the invention was made, owned by the same person. 35 U.S.C. §103(c). This portion of the statute is applicable to patent applications filed on or after November 29, 1999. In the present case, Hosein qualifies as prior art only under §102(e) and the present application and Hosein were, at the time the present invention was made, both owned by AT&T Corp. This joint ownership is evidenced by the following:

- assignment document dated April 27, 2000 recorded at reel/frame 010770/0740 assigning the present invention to AT&T Corp.; and
- assignment document dated January 26, 1998 recorded at reel/frame 8952/0208 assigning the invention claimed in U.S. Patent No. 6,442,139 to AT&T Corp.

The present application was filed on April 27, 2000, which is after the effective date (November 29, 1999) of the relevant portion of 35 U.S.C. §103(c). Therefore, Hosein is unavailable as a reference for use in an obviousness rejection.

III. All Pending Claims are Allowable in view of the Removal of Hosein as a Reference

All currently pending claims are allowable because the removal of the Hosein reference obviated the obviousness rejection under 35 U.S.C. §103.[1] There is no *prima facie* showing of obviousness. The remaining reference relied upon by the Office Action, Jordan et al., does not disclose the invention claimed in the currently pending claims.

Jordan et al. is directed to the load balancing of cache servers by shifting forwarded requests. The Jordan et al. system does not, however, "adjust the transmissions from the at least one terminal to the at least one server based on the transmission rate" of the terminal, as claimed in claim 1. In Jordan et al, the terminals would be the browsers 160 shown in Fig. 1a and the servers would be the cache servers 150 shown in Fig. 1a. As described in Jordan et al. at Col. 5, line 42 – Col. 6, line 5, the load monitoring function balances the load between the cache servers by the shifting of forwarded requests from overloaded servers to less loaded servers. It is important to note that this is a shifting of forwarded requests, that is, a request from one server to another server. Jordan et al. does not shift requests made from the terminals (browsers) to the servers (cache servers) as claimed in amended claim 1. As such, Jordan et al. does not teach the claimed limitation of "adjusting the transmissions from the at least one terminal to the at least one server".

In addition, Jordan et al. does not teach the limitation in claim 1 of "adjusting the transmissions from the at least one terminal to the at least one server based on the transmission rate by modifying at least one local load weight to move a load from at least one overloaded server to at least one non-overloaded server". The underlined portion of the claim limitation is the limitation of now cancelled claim 3 which has been added to claim 1 by the current amendment. This limitation claims the step of modifying a local

[1] Applicant does not admit that the combination of Hosein and Jordan et al. rendered the claimed invention obvious or that the Office Action made a showing of *prima facie* obviousness utilizing these two references.

load weight in order to adjust server load. As such, the step results in the prospective modification of the server load. The Office Action rejected claim 3 based on the disclosure in Jordan et al. at Col. 6, lines 11-15, Col. 1, lines 51-53, and Col. 6, lines 58-64. However, the cited sections do not disclose this claim limitation. Col. 6, lines 11-15 of Jordan et al. disclose the use of a load condition of the cache servers so that overloaded and underloaded servers can be **identified**. Thus, the load condition as used in Jordan et al. is used to identify a current condition of the servers, but is not used to directly adjust the future, or prospective, load on those servers as claimed in claim 1.

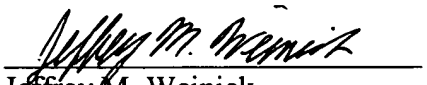
Independent claim 9 is allowable for the same reasons as those described above in connection with claim 1.

All remaining dependent claims depend upon, and incorporate the limitations of, one of the independent claims described above and are allowable for the reasons discussed above.

IV. Conclusion

For the reasons discussed above, all pending claims are allowable over the cited art. Reconsideration and allowance of all pending claims is respectfully requested.

Respectfully submitted,



Jeffrey M. Weinick
Reg. No. 36,304
Attorney for Applicant
Tel.: 973-795-1255

Date: September 23, 2003
AT&T Corp.
P.O. Box 4110
Middletown, NJ 07748